



IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

ALVIN BERNARD FLEMING,
Plaintiff,

vs.

RONNIE SABB, Solicitor,
Defendant.

§
§
§
§
§
§
§

CIVIL ACTION NO. 3:06-2220-HFF-JRM

ORDER

This case was filed as a 42 U.S.C. § 1983 action. Plaintiff, a pre-trial detainee, is proceeding pro se. The matter is before the Court for review of the Report and Recommendation (Report) of the United States Magistrate Judge suggesting that Plaintiff's case be dismissed *without prejudice* and without issuance and service of process. The Magistrate Judge also recommends that the dismissal be deemed a "strike" for purposes of the "three strikes" rule found in 28 U.S.C. § 1915(g). The Report is made in accordance with 28 U.S.C. § 636 and Local Civil Rule 73.02 for the District of South Carolina.

The Magistrate Judge makes only a recommendation to this Court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The Court is charged with making a de novo determination of those portions of the Report to which specific objection is made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

The Magistrate Judge filed the Report on August 9, 2006. Plaintiff failed to file any objections to the Report. In the absence of objections, the Court is not required to give any explanation for adopting the recommendation. *Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Moreover, a failure to object waives appellate review. *Wright v. Collins*, 766 F.2d 841, 845-46 (4th Cir. 1985). Nevertheless, in an abundance of caution and the interest of justice, the Court has construed the contents of Plaintiff's submissions to the Court filed subsequent to the issuance of the Report as objections. It has also made a de novo review of the entire record, but finds no error in the Report. Therefore, the Court will enter judgment accordingly.

After a de novo review of the Report and the record in this case, the Court adopts the Report to the extent that it does not contradict this Order and incorporates it herein. Therefore, it is the judgment of this Court that Plaintiff's case must be **DISMISSED** *without prejudice* and without issuance and service of process. The Court, however, declines to issue a strike in this case.

IT IS SO ORDERED.

Signed this 16th day of October, 2006, in Spartanburg, South Carolina.

s/ Henry F. Floyd
HENRY F. FLOYD
UNITED STATES DISTRICT JUDGE

NOTICE OF RIGHT TO APPEAL

Plaintiff is hereby notified of the right to appeal this Order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.